



Board of Adjustment



Agenda Numbers: 6 & 7
Case Numbers: BA-60001/ZA-50144
BA-60002/ZA-50144
Hearing Date: January 4, 2006

Appellant: Linda Trujillo
508 Bear Canyon Ln. NE
Albuquerque, NM 87113

Linda Dietz
7017 Edith Blvd. NE
Albuquerque, NM 87113

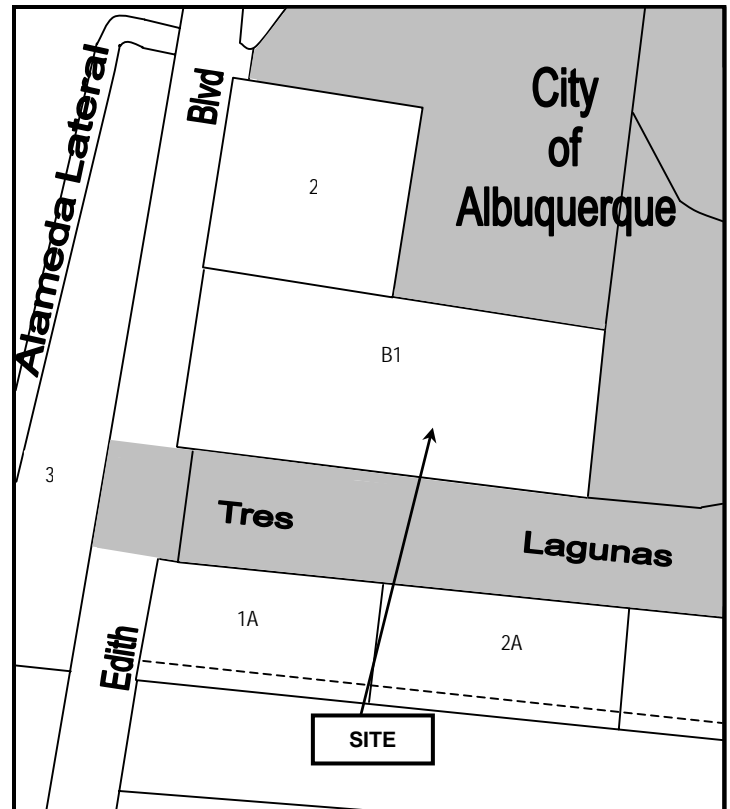
Agent: N/A

Applicant: Robert H. & Dolores M. Montoya
4109 Waterwillow Pl. NW
Albuquerque, NM 87120

Agent: Larry Kennedy, Jr.
2430 La Veta NE
Albuquerque, NM 87110

Site Location: 7036 Edith Blvd. NE

Zone Designation: A-1 Rural Agricultural



Summary: These requests are two appeals of the Zoning Administrator's decision to grant conditional use approval for a church and incidental facilities. The original request was heard at the October 11, 2005, Zoning Administration meeting. Approval was based on six Findings and six Conditions.

Staff Contact: Brennon Williams, Zoning Administrator

Attachments:

1. Appeal applications
2. Notice of Decision (October 18, 2005)
3. Original application with provided site plan
4. Material presented in opposition to the ZA request
5. Agency comments for the ZA application
6. Site photograph & zone atlas page

BA-60001/ZA-50144

Linda Trujillo appeals the Zoning Administrator's decision in granting a request for conditional use approval for a church and incidental facilities on Tract B1, Lands of Lloyd Lozes Goff, located at 7036 Edith Blvd. NE, zoned A-1, and containing approximately 1.22 acres. (E-16) (Original request submitted by Larry E. Kennedy, agent for Robert H. & Dolores M. Montoya)

BA-60002/ZA-50144

Linda Dietz, David & Roberta Roozen, and Stuart Harroun appeal the Zoning Administrator's decision in granting a request for conditional use approval for a church and incidental facilities on Tract B1, Lands of Lloyd Lozes Goff, located at 7036 Edith Blvd. NE, zoned A-1, and containing approximately 1.22 acres. (E-16) (Original request submitted by Larry E. Kennedy, agent for Robert H. & Dolores M. Montoya)

BACKGROUND

The Request

Both appeals are requesting that conditional use approval for a church and incidental facilities be overturned. The subject property, a 1.22-acre tract, is currently developed with mobile home. The applicant seeks to remove the existing unit and construct a 6,000 square foot church building on the site.

The Property

The property is located at 7036 Edith Blvd. NE, approximately $\frac{3}{4}$ of a mile north of Osuna Road. The parcel is zoned A-1, and is approximately 53,143 square feet in area. The northeast, east, and south sides of the site abut properties under the jurisdiction of the City of Albuquerque. Northwest of the site is an occupied parcel also zoned A-1, as are lots to the west of the site across Edith Boulevard.

The site plan submitted with the original request indicates that the proposed structure will be located toward the middle portion of the lot, and that the required setback and separation requirements will be met. Placement of the building in this location appears to allow for sufficient area for off-street parking, landscaping, and emergency access.

The Hearing

The original request was presented at the Zoning Administration hearing held on October 11, 2005. Larry Kennedy, agent for the property owner, presented the request. Mr. Kennedy testified that the church was seeking to relocate to the North Valley area, and intended to construct classrooms and a sanctuary within the 6,000 square foot building for worship services and related operations. He indicated that the church had already begun working with an architect on the general design and layout of the building, as well as related improvements that would be addressed through the construction permitting process.

Larry Kennedy, Jr., the son of the agent, also voiced his support for the project, stating that he had been working on the grading and drainage plan for the site. He also acknowledged familiarity with the county's construction procedures, and indicated that the most recent conceptual design of the church would allow for off-street parking toward the western portion of the lot. Mr. Kennedy also described current church membership as "small", and testified that traffic associated with the use would not be detrimental to the surrounding area.

There were also members of the public in attendance to voice their opposition to the project. Linda Dietz testified that she owned property across the street from the subject site and was concerned that the submitted information and written portions of the application lacked sufficient detail to explain the entire scope of the proposal. Specifically, she stated that the provided site plan did not show parking areas, landscaping, or ingress/egress points. She felt that deferral of the matter would be appropriate to allow the applicant an opportunity to provide a revised site plan, conduct a "professional survey" of the parcel in order to show the exact dimensions of the lot, and participate in a meeting with the applicant to further discuss the proposal. Ms. Dietz also referenced a letter of opposition that she previously faxed to the Zoning Administration Office which was included with the file. This letter referenced her intention to enforce "valid Restrictive Covenants filed with the County Clerk" which would prohibit the use of the property for a church, as well as questioned a perceived lack of overall detail with the application.

David Roozen, owner of the property to the northwest of the site, agreed with issues raised by Ms. Dietz. Mr. Roozen testified that he would have liked additional information on the project and expressed a desire to keep the "residential character" of the area intact. He was also interested in assurances that the proposal would not adversely effect his property values, and expressed concern that the applicant had not contacted him prior to submitting their application to Bernalillo County.

Virginia Huettig, vice president of the Northeast Valley Neighborhood Association, also expressed concern with the lack of specifics on the site plan, and stated that Edith Boulevard was not an "ordinary roadway". She indicated that there were multiple properties in the area of historical significance, noting that the City of Albuquerque has made considerable financial investments to ensure that some of these sites were adequately recognized and properly maintained. She stated that the general consensus of her neighborhood association was that only residential uses are appropriate for the area. She also referenced a letter presented from the association which outlined concerns about additional non-residential activities, as well as a list of other churches in the general vicinity of the subject site.

The Decision

The Zoning Administrator approved the request based on six Findings and six Conditions (Attachment 2). Specifically, it was determined that the issues raised by the opposition concerning a lack of participation with the applicant prior to the hearing, as well as a reported need for additional materials, seemed pointless. For conditional use requests, neighborhood support or opposition is not a central factor for consideration. Based on the concerns listed by the opposition, it was decided that deferral of the request to allow the nearby property owners and/or the neighborhood association to meet with the applicant was unnecessary. In review of the provided information, it was determined that a sufficient amount of relative material was provided with the application to comprehensively consider the request.

It was also acknowledged that the proposal met the criteria for approval as outlined in the ordinance: the property was of sufficient size and shape to accommodate the use; the property could be developed to avoid traffic congestion and related hazards; and the use of the property for a church would not be incompatible with the neighborhood or surrounding area. Additionally, as authorization of a conditional use in no way circumvents existing county requirements or development standards, a specific finding (Attachment 2, Finding # 6) was listed which requires all related improvements to the property be in compliance with applicable Bernalillo County provisions.

Moreover, because the criteria for authorization allows for conditions to be established which would help to mitigate any perceived adverse effects of the use, concerns about landscaping, parking, water and sewer systems, emergency vehicle access, grading and drainage, signage, and lighting were specifically addressed as such within the approval. In addition, these types of issues are reviewed for compliance with applicable standards during consideration for all construction permits in Bernalillo County.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 7. A-1 Rural Agricultural Zone.

- A. The regulations set forth in this section or set forth in this ordinance, when referred to in this section, are the regulations in the A-1 Rural Agricultural Zone. The purposes of this zone are to preserve the scenic and recreational values in the National Forests and similar adjoining land, to safeguard the future water supply, to provide open and spacious development in areas remote from available public services, and to recognize the desirability of carrying on compatible agricultural operations and spacious home developments in areas near the fringes of urban development. The regulations provide for the protection of these important land uses, and are not intended to unduly restrict or regulate farming, or ranching operations.
- B. Use Regulations. A building or premises shall be used only for the following purposes. All uses customarily incidental to the building or premises shall be maintained on site.
1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in the zone.
 2. Permissive Uses:
 - a. Ranch, farm, dairy, and rural residential activities.
 - b. Display and sale of agricultural products including poultry or rabbits raised on the premises, and products incidental to the sales activity.
 - c. One single-family dwelling or H.U.D. Zone Code II manufactured home per lot of record.
 - d. Accessory building or structure customarily incidental to the above uses.
 - e. Recreational vehicle or boat storage in the rear yard when such recreational vehicle or boat is not to be used as accessory living quarters, and is not connected to utilities, other than temporarily to a source of electricity. Such units cannot be used for storage of goods, materials, or equipment other than those items considered to be a part of the unit or essential for its immediate use. Recreation vehicle used for dwelling purposes served only by electricity for lighting purposes, the use of such recreational vehicle shall be limited to a maximum of two weeks in any calendar year.
 - (1) In the event where rear yard access is not available, outside parking in the front yard is allowed, provided:
 - (a) The body of the recreational vehicle or boat is at least 11 feet from the front property line.
 - (b) No part of the unit extends onto the public right-of-way.

- (c) A corner lot is always deemed to have reasonable access to the rear yard; a fence or wall is not necessarily deemed to prevent reasonable access.
 - f. Signs not exceeding 16 square feet in area per sign pertaining to the lease, hire or sale of a premises or sale of home-raised products, provided there shall be no more than one such sign per acre of lot area, and provided further that, if illuminated, the source of such illumination shall be nonoscillating and nonflashing.
 - g. Parking incidental to uses permitted in this zone, provided all vehicles parked are in operative condition.
 - h. Home occupation.
 - i. Concealed Wireless Telecommunications Facility, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - j. Wireless Telecommunications Antenna located on a public utility structure, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - k. Amateur Radio Antenna/Tower up to 65 feet as measured from grade.
3. Conditional Uses. The following uses may be permitted, if approved by the Zoning Administrator, in accordance with the procedures and under the conditions set out in the Administrative Section of this ordinance, with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
- a. Church and incidental facilities.
 - b. Day Care Center.
 - c. Family Day Care Home.
 - d. School.
 - e. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:
 - (1) The minimum lot size per use or activity shall be five acres.
 - (2) All required parking shall be located on the same site with the activity or use.
 - (3) The use or activity shall be at least two miles from the nearest conforming residential use.
 - (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
 - (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
 - (6) The use or activity shall be limited to three days in one calendar year.
 - (7) No permanent structures shall be erected.
 - (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
 - f. Commercial stables, rodeo arenas, polo grounds, and riding academies.
 - g. Privately or commercially operated recreational camps, lakes, swimming pools, and tennis courts.
 - h. Guest ranch and incidental facilities, including stables, corrals, swimming pools, restaurants, incidental retail sales and services and personal services provided such ranches are located on sites containing not less than 20 acres.
 - i. Hunting, fishing, ski resorts, and incidental facilities, provided they are located on sites containing not less than 20 acres.

- j. Kennels, animal hospitals, or the breeding, boarding or sale of dogs, cats, and birds.
 - k. Commercial animal establishment and nonprofit animal facility.
 - l. Real estate sales office in connection with a specific development for a period of not more than two years.
 - m. Temporary sawmill and logging camp, when located not less than 1,000 feet from any public highway, dwelling, or public recreational area.
 - n. Temporary storage building or yard for equipment, material, or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
 - o. One mobile home per acre or per lot of record used as a one-family dwelling, provided that where two or more mobile homes are located on one lot, they must be clearly incidental to a use listed under Section 7.B.1.a. or as provided in Section 7.B.2.p.
 - p. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, or mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
 - q. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
 - r. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.
 - s. Bed and Breakfast House.
 - t. Park.
- C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in the Supplementary Height and Area Regulation Section of this ordinance.
- D. Area Regulations:
- 1. Minimum Lot Area and Lot Width. Every lot shall have an area of not less than one acre and an average width of not less than 150 feet. The minimum lot area for this zone shall be one (1) acre, however, if the lot is in Residential Area two (2) as designated in the Bernalillo County Southwest Area Plan the minimum acceptable lot size of each lot is as follows:
 - a. One acre if both municipal water and sewer services are available.
 - b. One and one-fourth acres if municipal water and sewer services are not available.
 - 2. Setbacks. Minimum front yard setback shall be 25 feet, minimum side yard shall be ten feet, and the minimum rear yard shall be 25 feet, except as provided in the Supplementary Height and Area Regulations Section of this ordinance.

3. On any lot occupied by a mobile home, there shall be a side yard on each side of the mobile home of 15 feet in width and in no instance shall a mobile home be located nearer than 15 feet to an accessory building.
- E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-Street Parking, Loading and Unloading Regulations Section of this ordinance.

Agency Comments

Comments received for the conditional use request from the Bernalillo County Environmental Health Department stated that the applicant met with their office shortly after the application was filed and were made aware that upon future development, the property was required to be connected to City of Albuquerque sewer services. The department also indicated that the site was serviced by city water. The Bernalillo County Public Works Division has commented that a grading and drainage plan, Traffic Impact Analysis (TIA), and other applicable permits and/or reviews may be necessary.

INFORMATION SUBMITTED FOR THE APPEALS

Two separate appeals have been filed which are opposed to the approved conditional use.

Trujillo Appeal

Linda Trujillo, President of the Northeast Valley Neighborhood Association, through Virginia Huettig, indicates that the factual basis for the Zoning Administrator's decision was erroneous, that the proposal fell short of providing sufficient information for consideration, and that numerous issues have not been addressed to ensure that development would be appropriate for the area.

Dietz Appeal

Linda Dietz, David & Roberta Roozen, and Stuart Harroun also state that there was a lack of adequate information provided by the applicant for the proposal, and as such, feel that the decision reached was not supported by substantial evidence. Additionally, these opponents request that certain signage and parking requirements be specifically addressed, mention the existence of a "historical residence" across the street from the site, and question the overall need for an additional church in the area.

STAFF ANALYSIS

The Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in granting applications for conditional use permits. Based on the criteria outlined in Section 24.A.2.i., a request for conditional use approval may be authorized if an applicant is able to demonstrate the subject property is adequate in size and shape to accommodate the proposed use, can be developed to avoid traffic congestion or other hazards, and will not have an adverse effect on the neighborhood or seriously conflict with the character of the area. The regulations also recognize the allowance of additional provisions to help alleviate any effects the proposed use may have on the surrounding properties, such as additional landscaping, sign limitations, or wall construction.

All conditional uses are considered to be expected activities within each zone. They are specifically listed land uses intentionally placed within the zone designation by the authors of the Zoning Ordinance for given purpose. Permissive and conditional activities listed in each category allows for a wide range of uses within every zone designation. Arguments based on

perceived beliefs that only “residential” uses can take place in a zone that allows for the use of a parcel are incorrect. All zones which allow for residential uses also permit certain commercial businesses and agricultural activities. In fact, the A-1 zoning designation of the subject site specifically allows for ranching, farming, and the retail sale of agricultural products, as well as home businesses, ham radio antennas up to 65 feet, and wireless telecommunication facilities – all of which are allowed to occur without a public hearing.

Points of view which attempt to exclude specified activities currently outlined within a particular zone are contrary to the intent of the ordinance. Listed uses, both permissive and conditional, are anticipated within the zone based on their perceived level of intensity. This list also allows some certainty for development possibilities and/or property values. Such is the case for the current church proposal. Neighbors may not desire this particular use or claim that would be contrary to a perceived residential distinctiveness of the area - but by right - it is an expected activity in this zone.

Additionally, concerns about an applicant’s ability to meet the necessary criteria and/or provide “sufficient details” to address any and all questions are matters carefully scrutinized by the Zoning Administrator for each request. Through the solicited concerns and comments of area residents and property owners throughout the public hearing process, combined with knowledge of departmental processes and county procedures for development, a determination is made on each case as to whether or not the burden of proof has been met. Submitted information (or a lack thereof) for one type of request doesn’t imply that identical drawings, testimony or neighborhood consultation is necessary for a similar request.

There is also an inherent check-and-balances system provided with all conditional use requests. Specifically, any request which is approved is limited to the particular activity. Authorization of a conditional use does not suggest that other development requirements are unnecessary, nor are they ambiguously left up to the whim of an applicant to pick-and-choose for compliance. In many instances, comments provided by the county’s regulatory agencies in combination with existing review procedures help to ensure that an approved project meets the stated intent of the Zoning Ordinance.

For this case, all related zoning requirements must be met, including sufficient off-street parking, a limit to the height of the proposed structure to no more than 26 feet, and compliance with setback requirements. Jointly, review and approval for water and sewer systems, grading and drainage, traffic impacts, ingress/egress, emergency vehicle access, and the like will all be required to meet applicable standards. In no case does authorization of a conditional use guarantee other approvals or waive any other Bernalillo County requirements; a fact not only mentioned at each public hearing for each request, but specifically stated in every matter approved by the Zoning Administrator.

Analysis of the Trujillo appeal

Staff disagrees with the views expressed in the Trujillo appeal which indicate that there are not vacant and multi-use properties in the area, as well as their belief that the applicant failed to meet the burden of proof for the proposal. In fact, within approximately a 150-foot radius of the subject site, several parcels have no development whatsoever, and the tract immediately south of the church property is used only as an access easement for properties to the east.

The written justification provided with the appeal questions the Zoning Administrator’s stated conclusion in Finding #4 (Attachment 2). However, their reasoning seems a bit contradictory, as they state under item I(3) that “. . . (a)ll ‘multi-use’ development in the area pre-dates the

adoption of the North Valley Area Plan” (Attachment 1). This seems to reinforce staff’s finding that there are multiple activities in the area, other than the use of properties solely for residential dwellings.

Additionally, concerns about the design of the proposed building, the number of required off-street parking spaces, and lack of landscaping specifics seem unnecessary. As indicated, these items are either addressed as conditions of the approval (Attachment 2) and/or will be reviewed for compliance with applicable provisions during the established review process for a building permit. Equally, issues about lighting, sewer connection, and “overflow parking” are matters which can be addressed during development of the site and subsequent implementation of the use. However, in no instance does approval of a conditional use authorize an applicant, property owner, or church to be in violation of county standards.

It should also be noted that this appellant requests that the matter be remanded back to the Zoning Administrator with instruction that the proposal be deferred to allow the applicant an opportunity to provide “additional building, landscaping and site plans, as are needed to be able to accurately determine the true nature of the proposed use” as concluded by the appellant.

Analysis of the Dietz appeal

This appeal mirrors some of the concerns outlined in the previous petition, as the appellants question the amount of information presented, a lack of substantial evidence for the determination, and compliance with related development standards. Other issues, such as the self-described historical needs of the area, the “saturation” of existing churches in the North Valley area, and the church’s lack of contact with area residents seem to have no bearing on the request. Again, staff disagrees with the assertions that the proposal lacked sufficient detail and is confident that the applicant met their burden of proof necessary for approval of the conditional use.

However, as noted with the Trujillo appeal, these opponents also request that one of the existing conditions of the proposal be modified. Assuming denial of this appeal, these appellants request that the type of signage allowed for the property be limited exclusively to a wall-mounted sign to “keep within the character” of the neighborhood.

ANALYSIS SUMMARY

ORDINANCE CRITERIA	PROVIDED INFORMATION	EXPRESSED CONCERNS	STAFF ANALYSIS
Property is adequate in size & shape?	<ul style="list-style-type: none"> Site is approximately 1.22 acres in area Lot is rectangular in shape Approximately 155 feet of frontage along Edith Blvd. Proposed 6,000 sq. ft. building to be located toward eastern third of property 	<ul style="list-style-type: none"> Questions regarding the design of the building and related improvements; lack of substantial information 	<ul style="list-style-type: none"> Proposal provides sufficient area in order to meet setbacks and separation distances; will provide room for landscaping, parking, etc. Existing conditions and development requirements will ensure proposal meets applicable Bernalillo County standards

(ANALYSIS continued on next page)

(ANALYSIS cont.)

Property can be developed to avoid traffic congestion/hazards?	<ul style="list-style-type: none"> Property fronts Edith Blvd.; approximately 155' right-of-way 	<ul style="list-style-type: none"> May create traffic problems; no impact study conducted 	<ul style="list-style-type: none"> Comments received from Public Works Division indicate project subject to their review and approvals Property is accessed by Edith Blvd.; designed as a minor arterial for vehicular traffic Existing right-of-way provides sufficient width to accommodate anticipated vehicular trip generation
Use will not be detrimental to surrounding properties & character of the area?	<ul style="list-style-type: none"> Structure will be located toward eastern portion of property Setbacks combined with landscaping and screening can be used to achieve aesthetic purposes, as well as light-and-air considerations General area is sparsely populated with some residential development and vacant properties General area consists of a variety of residential, agricultural and commercial uses 	<ul style="list-style-type: none"> Lack of guarantees for perceived lighting, signage, traffic, and parking problems Property is not connected to City of Albuquerque sewer services Design of building has not been specifically conveyed to area residents 	<ul style="list-style-type: none"> Proposed use is expected activity in zone category Mixture of uses in area; proposed church comparable to other activities Existing development standards for lighting, signage, traffic and parking will be upheld; noncompliance is the responsibility of the property owner or project designer to correct

CONCLUSION

The Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in approving applications for conditional use permits. The Board may choose to deny the appeals, thereby upholding the previous decision; approve the appeals and overturn the previous decision; modify the established findings and conditions from the previous decision; or defer a decision on the matter to allow all interested parties to meet to discuss their differences. In any case, based on the information and testimony provided for the original request, in combination with the materials submitted for each appeal, staff submits these matters to the Board with the following recommendations:

RECOMMENDATIONS

Denial of BA-60001/ZA-50144 and denial of BA-60002/ZA-50144, thereby upholding the determination of the Zoning Administrator.

Brennon Williams
Zoning Administrator